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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation
Against:

Case No. R-2101

**PETITION TO REVOKE
PROBATION**

JODY MICHELLE NIELSON (aka KIRK)

18990 Caballero Drive

Apple Valley, California 92308

Respiratory Care Practitioner License No. 23913

Respondent.

Complainant alleges:

PARTIES

1 Stephanie Nunez (Complainant) brings this Petition to Revoke Probation
solely in her official capacity as the Executive Officer of the Respiratory Care Board of
California (Board), Department of Consumer Affairs.

2. On or about October 14, 2004, the Board issued Respiratory Care
Practitioner License No. 23913 to Jody Michelle Nielson (aka Kirk) (Respondent). This license
was in effect at all times relevant to the charges brought herein. The license expired on June 30,
2007, and has not been renewed.

3 In a disciplinary action entitled *In the Matter of the Statement of Issues*

1 *Against Jody Michelle Kirk*, Case No. S-339, the Board issued a decision effective October 14,
2 2004, in which Respondent was issued a probationary license with terms and conditions for a
3 period of three (3) years. A copy of that decision is attached as Exhibit 1 and is incorporated
4 herein by reference.

5 JURISDICTION

6 4. This Petition to Revoke Probation is brought before the Board under the
7 authority of the following laws. All section references are to the Business and Professions Code
8 (Code) unless otherwise indicated.

9 5. Section 3710 of the Code states: "The Respiratory Care Board of
10 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
11 8.3, the Respiratory Care Practice Act]."

12 6. Section 3718 of the Code states: "The board shall issue, deny, suspend,
13 and revoke licenses to practice respiratory care as provided in this chapter."

14 7. Section 3754 of the Code states: "The board may deny an application for,
15 or issue with terms and conditions, or suspend or revoke, or impose probationary conditions
16 upon, a license in any decision made after a hearing, as provided in Section 3753."

7 8. Section 118 of the Code states:

18
19 "(b) The suspension, expiration, or forfeiture by operation of law of a license
20 issued by a board in the department, or its suspension, forfeiture, or cancellation by order
21 of the board or by order of a court of law, or its surrender without the written consent of
22 the board, shall not, during any period in which it may be renewed, restored, reissued, or
23 reinstated, deprive the board of its authority to institute or continue a disciplinary
24 proceeding against the licensee upon any ground provided by law or to enter an order
25 suspending or revoking the license or otherwise taking disciplinary action against the
26 licensee on any such ground.

27 "
28

COST RECOVERY

9. Section 3753.5, subdivision (a) of the Code states:

“In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case.”

10. Section 3753.7 of the Code states:

“For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees.”

1. Section 3753.1, subdivision (a) of the Code states:

“An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation.”

FIRST CAUSE TO REVOKE PROBATION

(Biological Fluid Testing)

12. At all times after the effective date of Respondent’s probation, Condition 14 stated:

Respondent, at her expense, shall participate in random testing, including, but not limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or a drug screening program approved by the Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The frequency and location of testing will be determined by the Board.

At all times, Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested, and submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances.

If Respondent is unable to provide a specimen in a reasonable amount of time

1 from the request, while at the work site, Respondent understands that any Board
2 representative may request from the supervisor, manager or director on duty to observe
3 Respondent in a manner that does not interrupt or jeopardize patient care in any manner,
4 until such time Respondent provides a specimen acceptable to the Board.

5 Failure to submit to testing or appear as requested by any Board representative for
6 testing, as directed, shall constitute a violation of probation, and shall result in the filing
7 of an accusation and/or a petition to revoke probation against Respondent's respiratory
8 care practitioner license.

9 13 Respondent's probation is subject to revocation because she failed to
10 comply with Probation Condition 14, referenced above. The facts and circumstances regarding
11 this violation are as follows:

12 A. As part of respondent's random drug testing program, she was required to
13 telephone Compass Vision, Inc. (CVI) on a daily basis to determine if she needed to
14 provide a specimen for testing and analysis. Respondent failed to telephone CVI on the
15 following dates: January 1, April 3, August 23, September 3, and October 14 and 16
16 through 23, 2005; April 29, June 2, 4, 13, 14, 19, July 3, 8, and October 1, 2006; January
17 7, February 2, 5, March 12, 21, 26, April 3, 5, 6, 8, 11, 13, 30, May 16, 18, 21, 26, 30,
18 June 1, 6, 7, , 15, 16, 21, 22, 24, 25, 27, 30, July 3, 5, 10, 13, 23 through 27, 31 and
19 August 2, 3, 5, 7 through 12, 14 through 18, 20, 22, and 26 through 28, 2007.

20 B. Respondent was scheduled to provide a specimen for testing and analysis
21 on November 22, 2004. She did not provide a specimen as requested. She was scheduled
22 to provide a specimen for testing and analysis on January 11, 2005. She did not provide a
23 specimen until January 12, 2005. She was scheduled to provide a specimen for testing
24 and analysis on November 17, 2005. She did not provide a specimen until November 18,
25 2005. She was scheduled to provide a specimen for testing and analysis on May 18,
26 2006. She did not provide a specimen until May 19, 2006. She was scheduled to provide
27 a specimen for testing and analysis on June 29, 2006. She did not provide a specimen
28 until July 1, 2006. She was scheduled to provide a specimen for testing and analysis on

December 27, 2006. She did not provide a specimen until December 28, 2006

C. Respondent was scheduled to provide a specimen for testing and analysis on December 27 and 28, 2005, March 20, 2006, June 15 and 29, 2006, and February 2, March 10, May 29, July 5, and August 1, 2007. However, since her account with Compass Vision Inc. was on hold, a specimen was not provided for testing.

SECOND CAUSE TO REVOKE PROBATION

(Quarterly Reports)

14. At all times after the effective date of Respondent's probation, Condition 18 stated:

Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation, and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th. For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th. For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th. For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

15. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 18, referenced above. The facts and circumstances regarding

1 this violation are as follows:

2 A. Respondent failed to submit her Quarterly Report of Compliance for the
3 period October 1 through December 31, 2006, due to the probation monitor by January 7,
4 2007, for the period January 1 through March 31, 2007, due to the probation monitor by
5 April 7, 2007, and for the period April 1 through June 30, 2007, due to the probation
6 monitor by July 7, 2007.

7 THIRD CAUSE TO REVOKE PROBATION

8 (Probation Monitoring Costs)

9 16. At all times after the effective date of Respondent's probation, Condition
10 20 stated:

11 All costs incurred for probation monitoring during the entire probation shall be
12 paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or
13 increased. Respondent's failure to comply with all terms and conditions may also cause
14 this amount to be increased.

15 All payments for costs are to be sent directly to the Respiratory Care Board and
16 must be received by the date(s) specified. (Periods of tolling will not toll the probation
17 monitoring costs incurred.)

18 If Respondent is unable to submit costs for any month, she shall be required
19 instead to submit an explanation of why she is unable to submit the costs, and the date(s)
20 she will be able to submit the costs including payment amount(s). Supporting
21 documentation and evidence of why the Respondent is unable to make such payment(s)
22 must accompany this submission.

23 Respondent understands that failure to submit costs timely is a violation of
24 probation and submission of evidence demonstrating financial hardship does not preclude
25 the Board from pursuing further disciplinary action. However, Respondent understands
26 providing evidence and supporting documentation of financial hardship may delay further
27 disciplinary action.

28 In addition to any other disciplinary action taken by the Board, an unrestricted

1 license will not be issued at the end of the probationary period and the respiratory care
2 practitioner license will not be renewed, until such time all probation monitoring costs
3 have been paid.

4 The filing of bankruptcy by Respondent shall not relieve the Respondent of his
5 responsibility to reimburse the Board for costs incurred.

6 17 Respondent's probation is subject to revocation because she failed to
7 comply with Probation Condition 20, referenced above. The facts and circumstances regarding
8 this violation are as follows

9 A. Respondent is delinquent in her probation monitoring costs in the amount
10 of \$3,750.00

1 FOURTH CAUSE TO REVOKE PROBATION

12 (Cost Recovery)

13 18. At all times after the effective date of Respondent's probation, Condition
14 24 stated:

15 Respondent shall pay to the Board a sum not to exceed the costs of the
16 investigation and prosecution of this case. That sum shall be \$1,683.50 and shall be paid
17 in full directly to the Board, in equal quarterly payments, within 12 months from the
18 effective date of this decision. Cost recovery will not be tolled.

19 If Respondent is unable to submit costs timely, she shall be required instead to
20 submit an explanation of why she is unable to submit these costs in part or in entirety, and
21 the date(s) she will be able to submit the costs including payment amount(s). Supporting
22 documentation and evidence of why the Respondent is unable to make such payment(s)
23 must accompany this submission

24 Respondent understands that failure to submit costs timely is a violation of
25 probation, and submission of evidence demonstrating financial hardship does not
26 preclude the Board from pursuing further disciplinary action. However, Respondent
27 understands that providing evidence and supporting documentation of financial hardship
28 may delay further disciplinary action.

1 Consideration to financial hardship will not be given should Respondent violate
2 this term and condition, unless an unexpected AND unavoidable hardship is established
3 from the date of this order to the date payment(s) is due.

4 The filing of bankruptcy by the Respondent shall not relieve the Respondent of
5 her responsibility to reimburse the Board for these costs.

6 19. Respondent's probation is subject to revocation because she failed to
7 comply with Probation Condition 24, referenced above. The facts and circumstances regarding
8 this violation are as follows:

9 A. Respondent is delinquent in her cost recovery in the amount of \$1,115.50.

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Respiratory Care Board issue a decision

13 1. Revoking the probation that was granted by the Respiratory Care Board of
14 California in Case No. S-339;

15 2. Revoking or suspending Respiratory Care Practitioner License No. 23913
16 issued to Jody Michelle Nielson;

17 3 Ordering Jody Michelle Nielson to pay the Respiratory Care Board the
18 costs of the investigation and enforcement of this case, and if probation is continued or extended,
19 the costs of probation monitoring; and

20 4. Taking such other and further action as deemed necessary and proper.

21 DATED: September 20, 2007

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24 
STEPHANIE NUNEZ
Executive Officer
25 Respiratory Care Board of California
26 Department of Consumer Affairs
27 State of California
28 Complainant